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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,589	09/29/2003	Chen Chin J. Huang	SK703.PT1	4482

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,589

Applicant(s)

HUANG, CHEN CHIN J.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 02182005.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: translation in English of Otake - JP2000-201545 A.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 7, 9, 11, 21, are rejected under 35 U.S.C. §102(b) as being anticipated by Otake (JP2000-201545).

As to Claim 1, Otake discloses a maneuverable topiary frame (Figs. 1-11) comprising two or more separable members (16 and 2 of Fig. 3); one or more hinges (13 of Fig. 1), integrally a part of the frame, and connecting at least two adjoining separable members (Figs. 1 and 3); one or more clips permanently affixed to a member (region around 14 of Fig. 1); wherein at least one of the hinges adjoining two of the members forms a main structure (shown in Fig. 1) having an interior side and an exterior side (interior and exterior of structure in Fig. 1), and wherein the one clip when released enable one or more of the two separable members to move upon a center axis and pivot or rotate along their hinges such that the interior side of the main structure is completely exposed (in that the structure is visible or open to view) allowing the main structure to enclose around a growing plant (structure capable of enclosing a growing plant), and when engaged secure the two separable members from moving, as a three-dimensional unitary form (Fig. 1).

As to Claim 4, Otake further discloses one or more hinges that are two lengths of interwoven wire (the top and bottom hinges shown above 13s in Fig. 1; that is hinges at very top and bottom of 12 in Fig. 1) in along a common axis of the two separate members.

As to Claim 5, Otake further discloses hooks (14 of Fig. 1) for clips.

As to Claims 7 and 9, Otake further discloses the three-D unitary form being a bear with upper and lower extremity set of members, arms and legs (Figs. 1-11), for enclosing topiary foliage (capable of enclosing topiary foliage); the main structure corresponding to a torso of an animal (Fig. 1), the arms and legs connected to the torso (Fig. 1).

As to Claim 11, Otake further discloses the one or more clips located opposite the hinges (Fig. 1 of Otake).

As to Claim 21, Otake further discloses the center axis located at a half way pint of the main structure (in that there is a horizontal axis half way “up” the structure of Fig. 1).

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 6, 8, and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Otake (JP2000-201545) in view of DiMuzio (US 6,237,882 B1).

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As to Claims 2 and 3, the limitations of Claim 1 are disclosed as described above. Otake further discloses support pieces (shown in Fig. 1) to support the entire frame. Not disclosed is a filler frame of mesh along a number of gaps between support pieces. DiMuzio, however, discloses a filler frame of mesh along a number of gaps between support pieces (shown in Fig. 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Otake by using a filler mesh as disclosed by DiMuzio so as to provide additional support and shape (see DiMuzio at col. 4 lines 44-48).

As to Claim 6, the limitations of Claim 3 are disclosed as described above. Not disclosed are the support pieces higher gauge wire and the filler being lower gauge wire. DiMuzio, however, discloses a frame with support pieces higher gauge wire (col. 3 lines 56-58) and the filler being lower gauge wire (col. 4 lines 44-46).

As to Claim 8, Otake in view of DiMuzio further disclose the extremities correspond to objects in addition to arms and legs (in that, 20 of Fig. 14 is capable of holding fruit, vegetables, or candles - col. 4 lines 11-21 of DiMuzio).

As to Claim 10, the limitations of Claim 8 are disclosed as described above. Not disclosed is the animal from being a seal with the object a ball. However, because a bear design with fruit etc. was an art-recognized equivalent to a seal and ball in animal-from topiaries where in is immaterial as the exact animal form, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the bear/fruit with the seal/ball in the topiary of Otake as modified by DiMuzio.

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Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Otake (JP2000-201545) in view of Pierce (US 4,190,984).

As to Claim 12, the limitations of Claim 1 are disclosed as described above. Not disclosed is the wire galvanized. Pierce, however, discloses a topiary with galvanized wire (col. 4 lines 24-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Otake by using galvanized wire as disclosed by Pierce so as to have the wire resistant to the weather so as to prolong the outdoor life of the frame.

Claims 22 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Otake (JP2000-201545) in view of Pan (US 6,237,882 B1).

As to claim 22, the limitations of Claim 1 are disclosed as described above. Not disclosed are the upper and lower extremities separable from the main structure and each of the set of members pivots about a hinge connecting each set of members to the main structure, each of the set of members further comprising a clip opposite to its hinge for releasing and securing each of the set of members to the main structure. Pan however discloses a topiary-like structure with sets of members hinged and separable from the main structure (Figs. 2 and 3; Figs. 4 and 5), each with hinges and clips (Figs. 2-5), and it is obvious to place the clips in positions to optimize the releasing and securing procedure. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Otake by adding hinged extremities as disclosed by Pan so as to allow the structure to be folded for storage (see Pan at col. 2 lines 23-27).

As to claim 23, Otake as modified by Pan further disclose the upper and lower extremities being arms, legs, and additional objects (legs and head portions of Pan) and the main structure the middle region of the animal form (see both Pan and Otake).

Claim 24 is rejected under 35 U.S.C. §103(a) as being unpatentable over Otake (JP2000-201545) in view of Bales (US 4,258,503).

As to Claim 1, Otake discloses a maneuverable topiary frame (Figs. 1-11) comprising two or more separable members (16 and 2 of Fig. 3); one or more hinges (13 of Fig. 1), integrally a part of the frame, and connecting at least two adjoining separable members (Figs. 1 and 3); one or more clips permanently affixed to a member (region around 14 of Fig. 1); wherein at least one of the hinges adjoining two of the members forms a main structure (shown in Fig. 1) having an interior side and an exterior side (interior and exterior of structure in Fig. 1), and wherein the one clip when released enable one or more of the two separable members to move upon a center axis (horizontal axis through the structure) and pivot or rotate along their hinges such that the interior side of the main structure is completely exposed (in that the structure is visible or open to view) allowing the main structure to be open to positioning around a growing plant (structure capable of positioning around a growing plant) and ease in manipulation of the plant throughout all separable members, and when engaged secure the two separable members from moving, as a three-dimensional unitary form (Fig. 1). Not disclosed are the two members of the main structure being substantially symmetrical. Bales, however, discloses a topiary with a main structure having two separable members which are symmetrical. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Otake by



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having the two separable members being symmetrical as disclosed by Bales so as to have a topiary that has a minimum of parts and can be assembled rapidly.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

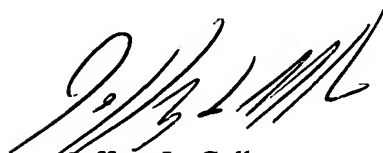
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner